



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[EPA-R08-OAR-2013-0330, FRL-9902-46-Region 8]**

**Approval of North Dakota Request for Partial Delegation of Prevention of Accidental Release, Clean Air Act Section 112(r) Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Under Clean Air Act (CAA) Section 112(l), EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. On September 13, 2012, the State of North Dakota, Department of Agriculture (NDDA), requested partial delegation of the CAA section 112(r)(7) Risk Management Program (RM Program) for agricultural anhydrous ammonia facilities. The September 13, 2012 request was supplemented by the NDAA on February 26, 2013, and April 11, 2013. EPA has preliminarily determined that NDDA's request meets CAA requirements for partial delegation, and EPA is proposing to approve the request.

**DATES:** Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2013-0330, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- E-mail: [Truskowski.brent@epa.gov](mailto:Truskowski.brent@epa.gov).
- Fax: (303) 312-7203 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: **Brent Truskowski**, Acting RMP Coordinator, Emergency Response and Preparedness Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8EPR-ER, 1595 Wynkoop St., Denver, Colorado 80202-1129.
- Hand Delivery: **Brent Truskowski**, Acting RMP Coordinator, Emergency Response and Preparedness Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8EPR-ER, 1595 Wynkoop St., Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2014-0330.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Preparedness Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Brent Truskowski, Acting RMP Coordinator, Emergency Response and Preparedness Program, Mailcode 8EPR-ER, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129, (303) 312-6235, [truskowski.brent@epa.gov](mailto:truskowski.brent@epa.gov)

**SUPPLEMENTARY INFORMATION:** Information is organized as follows:

## **Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The word and initials RM Program means Risk Management Program
- (iii) The initials NDDA mean North Dakota Department of Agriculture
- (iv) The initials RMP mean Risk Management Plan
- (v) The initials CFR mean Code of Federal Regulations
- (vi) The initials FR mean Federal Register
- (vii) The initials CAS mean Chemical Abstract Service
- (viii) The initials NDCC mean North Dakota Century Code
- (ix) The initials NDAC mean North Dakota Administrative Code
- (x) The initials MOU mean Memorandum of Understanding

## **Table of Contents**

- I. What Action is EPA Proposing in Today's Notice?
- II. Background
  - A. Risk Management Program Background
  - B. Delegation of Section 112 Programs
  - C. North Dakota's Request for Delegation
- III. EPA's Analysis of NDDA's Submittal
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

## **I. What Action is EPA Proposing in Today's Notice?**

On June 20, 1996, EPA promulgated Risk Management Program (RM Program) regulations (40 CFR part 68) which were mandated under the accidental release prevention provisions of section 112(r)(7) of the CAA. 61 FR 31668. These regulations require owners and operators of stationary sources subject to the regulations to submit risk management plans (RMPs) to a central location specified by EPA. These regulations also encourage sources to reduce the probability of accidentally releasing substances that have the potential to cause harm to public health and the environment, and stimulate dialogue between industry and the public to improve accident prevention and emergency response practices.

The North Dakota Department of Agriculture (NDAA) has requested partial delegation of the RM Program for facilities with an anhydrous ammonia storage capacity of ten thousand pounds or more that is intended to be used as fertilizer or in the manufacturing of a fertilizer ("agricultural anhydrous ammonia facilities"). EPA is proposing to approve this request and to partially delegate the RM Program for agricultural anhydrous ammonia facilities to the State of North Dakota. EPA would retain authority for the RM Program for all other regulated chemicals which may be present at these facilities. *See* 40 CFR 68.130.

After a thorough review of North Dakota's partial delegation request, and the pertinent statutes and regulations, Region 8 proposes to find that such a delegation is appropriate in that North Dakota has satisfied the criteria in 40 CFR 63.91 and 63.95 by demonstrating it has adequate and effective authorities, resources, and procedures in place for implementation and

enforcement of agricultural anhydrous ammonia facilities subject to the RM Program. If approved, North Dakota will have the primary authority and responsibility to carry out elements of the RM Program for agricultural anhydrous ammonia facilities within the State, including on-site inspections, recordkeeping reviews, audits, compliance assistance and outreach, and non-criminal enforcement. EPA will retain authority for implementing the RM Program for all other chemicals at these facilities, and for the RM Program generally in North Dakota for all other facilities.

## **II. Background**

### **A. Risk Management Program Background**

On January 31, 1994 (59 FR 4493), EPA promulgated (along with various other provisions) the “List of Regulated Substances and Thresholds for Accidental Release Prevention and Risk Management Programs for Chemical Accident Release Prevention.” *See* 40 CFR 68.130. The list, known as Tables 1 to 4 in section 68.130, sets forth the list of regulated substances and thresholds under CAA Section 112(r). Anhydrous ammonia is a regulated substance under section 112(r) based on a mandate from Congress and its subsequent inclusion on the list in Tables 1 and 2 in section 68.130. Tables 1 and 2 are identical lists of toxic chemicals arranged alphabetically in Table 1 and by Chemical Abstract Service (CAS) number in Table 2.

Part 68 also sets forth the requirements for owners or operators of stationary sources concerning the prevention of accidental releases. The regulations address the safe design, operation, and maintenance of covered processes and emergency response to accidental releases

that may occur. The regulations also include requirements for the development and submission of RMPs by regulated sources. The RMP is required to include information about the regulated stationary source and about the source's hazard assessment, prevention program, and emergency response program.

## **B. Delegation of Section 112 Programs**

Section 112(l) of the CAA and 40 CFR part 63, subpart E authorize EPA to approve state rules and programs to be implemented and enforced in place of certain CAA requirements, including the RM Program set forth at 40 CFR part 68. EPA promulgated 40 CFR, part 63, subpart E on November 26, 1993 (58 FR 62262) and subsequently amended these regulations on September 14, 2000 (65 FR 55810).

Under 40 CFR 63.91(a), a state must satisfy requirements under 40 CFR 63.91(d) to obtain delegation of a section 112 program. If the state adopts federal rules unchanged, then only the criteria in 40 CFR 63.91(d) are required, except for delegation of the RM Program for which the provisions of 40 CFR 63.95 must also be met. *See* 40 CFR 63.91(a)(1) and (a)(4).

Under 40 CFR 63.91(d), the state may either reference approval of a Title V program or directly satisfy the requirements in (d)(3)(i) – (v). These requirements include:

- A written finding by the State Attorney General that the state has the necessary legal authority to implement and enforce the program and to assure compliance;
- Copies of the state's statutes and regulations granting authority to implement the program;

- A demonstration that the state has adequate resources to implement and enforce the program;
- A schedule demonstrating expeditious implementation of the program; and
- A plan that assures expeditious compliance, including a complete description of the state's compliance tracking and enforcement program.

If a State's legal authorities substantially meet the requirements above (set out in detail in 40 CFR 63.91(d)(3)(i)), but are not fully approvable, EPA may grant partial approval with the State's consent and the EPA will continue to implement those authorities that are not approved. *See* 40 CFR 63.91(f).

Under 40 CFR 63.95(b), the State's part 68 program shall contain the following elements, consistent with the procedures in section 63.91, for at least the chemicals listed in 40 CFR part 68, subpart F, that an approvable State Accidental Release Prevention program is regulating:

- A demonstration of the state's authority and resources to implement and enforce regulations that are no less stringent than the regulations of 40 CFR part 68, subparts A through G and 40 CFR 68.200; and
- A requirement that any source subject to the State's part 68 program submit a RMP that reports at least the same information in the same format as required under part 68, subpart G;<sup>1</sup>

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<sup>1</sup> Under 40 CFR 63.95(b)(2), a State's RM Program may require reporting of information not required by the Federal program, and these requirements (like any other additional State requirements) will become federally enforceable upon approval. In this case, NDDA has directly adopted by reference the Federal program in part 68, including the reporting requirements of subpart G.



- Procedures for reviewing RMPs and providing technical assistance to stationary sources including small businesses.
- A demonstration of the State’s authority to enforce all part 68 requirements must be made, including an auditing strategy that complies with section 68.220.

For a program that covers all of the federally-listed chemicals (a “complete program”) or a program covering less than all of the federally-listed chemicals (a “partial program”) the State must take delegation of the full part 68 program for the federally-listed chemicals it regulates.

### **C. North Dakota’s Request for Delegation**

In late 2009 and early 2010, NDDA initiated conversations with EPA Region 8 regarding the procedure for receiving partial delegation of the RM Program for agricultural anhydrous ammonia facilities. EPA provided NDDA information regarding the delegation process through various email correspondence, phone conversations and meetings. On February 17, 2011, EPA Region 8 sent NDDA a letter formally recognizing NDDA’s interest in receiving partial delegation of the RM program, and describing the basic requirements for the NDDA to request and receive partial delegation of the RM Program.

NDDA has in place a program for regulation of certain aspects of anhydrous ammonia facilities, but this program does not address RM Program requirements. North Dakota Century Code (NDCC) 19-20.2 provides general authority for NDDA to license and regulate anhydrous ammonia facilities with a capacity exceeding six thousand gallons. NDCC 19-20.2 contains engineering requirements for tanks, valve fittings, and other equipment to ensure that tanks and appurtenances are structurally sound and properly maintained. NDCC 19-20.2 also includes

siting requirements that specify minimum distances between anhydrous ammonia storage tanks and adjoining property lines, residences, places of public assembly, and institutional residences. NDCC 19-20.2 also provides NDDA authority to enter any public or private premises to inspect equipment and respond to complaints. If violations are found, NDCC 19-20.2 allows NDDA to issue cease and desist orders, revoke or suspend facility licenses, and issue civil penalties.

On April 18, 2011, the North Dakota Legislative Assembly enacted House Bill 1321, which created NDCC 19-20.3. NDCC 19-20.3 was enacted in anticipation of NDDA requesting and assuming partial delegation for the RM Program for agricultural anhydrous ammonia facilities. NDCC 19-20.3 became effective April 1, 2013. NDCC 19-20.3-01 gives the Agriculture Commissioner authority to determine compliance with the RM Program requirements set forth in 40 CFR part 68 by providing the Commissioner authority to:

1. Request information from any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the risk management program requirements.
2. Conduct inspections of any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the risk management program requirements.
3. Obtain and review RMPs required under 40 CFR part 68, and other records applicable to any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the risk management program requirements.

NDCC 19-20.3 also provides the Agriculture Commissioner with enforcement authority when RM Program violations are identified. Specifically, NDCC 19-20.3-02 states that the Commissioner may:

1. Bring an action to enjoin a violation or a threatened violation;
2. Issue a cease and desist order; and
3. Impose a civil penalty through an administrative hearing in an amount not exceeding ten thousand dollars per day for each violation.

On September 13, 2012, NDDA submitted to EPA a request to receive partial delegation of authority to implement and enforce the RM Program. This request included the following documents (which are included in the docket for this action):

- A summary of the State's anhydrous ammonia regulatory authority and general components of a proposed RMP enforcement program;
- A copy of NDCC 19-20.2;
- A copy of NDCC 19-20.3;
- A letter from the North Dakota Attorney General asserting authority of the Agriculture Commissioner to enforce the RM Program;
- A proposed Memorandum of Understanding (MOU) between NDDA and the EPA;
- A proposed RMP enforcement response policy;
- A proposed administrative rule for incorporating by reference 40 CFR part 68 into North Dakota's regulations (NDAC 7-12-03).

EPA reviewed the information provided with the request for partial delegation, and requested further information in December 2012. In addition, EPA responded to NDDA's request on December 13, 2012, acknowledging the receipt of the request for partial delegation, and describing the steps required by EPA to delegate the RM Program to NDDA.

On February 26, 2013, NDDA submitted further information in response to EPA's request. The response provided EPA with a revised letter from the Attorney General addressing specific questions and concerns raised by EPA and a revised summary of North Dakota's regulatory authority and general components of the proposed enforcement program. The response indicated that North Dakota was amending a portion of its previous request and excluding the criminal enforcement authority required under 40 CFR 70.11(a)(3)(ii) and (iii) from its partial delegation request. The response discussed the status of North Dakota's rulemaking process to incorporate the RM Program into its regulations. The response also described how the requirements of 40 CFR 63.95(b)(3) and (b)(4) would be met, as well as a description of how EPA concerns regarding the proposed MOU were met.<sup>2</sup>

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<sup>2</sup> The MOU between EPA and the NDDA, while not a delegation requirement, is intended to ensure regular communication between the two Agencies to ensure effective enforcement of the RM program by NDDA. The purposes of the MOU are to promote the identification and coordination of the section 112(r)(7) RM Program compliance and enforcement activities pertaining to agricultural bulk anhydrous ammonia facilities, to describe both parties' mutual understanding of compliance responsibilities, and to avoid replication and duplication of efforts while discharging the parties' respective duties. By November 30 of each year, North Dakota plans to provide EPA Region 8 with an end of year report that summarizes North Dakota's RM Program regulatory activities for the previous federal fiscal year. The report is expected to include information on the number of RM Program inspections conducted, number and types of violations identified, notable cases, description of the enforcement actions taken, number and description of RM Program compliance assistance activities, and other information related to RM Program enforcement. The MOU ensures ongoing communication regarding NDDA enforcement of the RM Program by NDDA providing EPA with an enforcement targeting scheme at the beginning of each federal fiscal year. The targeting scheme is expected to identify facilities scheduled for initial or follow-up inspection for the upcoming federal fiscal year and priority areas for regulation. NDDA will also notify EPA of accidents at regulated facilities that cause environmental damage, personal injury, property damage, or involve releases of 100 lbs or more. EPA and NDDA plan to share facility and chemical data base information, progress reports, and results of inspections to the extent that the information is not confidential.

On April 1, 2013, North Dakota incorporated by reference into its regulations the provisions of 40 CFR part 68<sup>3</sup> as published on June 30, 2011, with only one adjustment. *See* NDAC 7-12-03. This adjustment clarifies North Dakota is incorporating 40 CFR part 68 only insofar as it applies to agricultural anhydrous ammonia facilities. NDAC 7-12-03-02.

EPA reviewed the additional information provided by North Dakota and requested additional information on proposed enforcement tracking. On April 18, 2013, NDDA provided EPA with a “Revised Summary of North Dakota’s Anhydrous Ammonia Regulatory Authority and General Components of a Proposed RMP Enforcement Program.” On June 3, 2013, EPA Region 8 determined that the delegation package was complete, and sent NDDA a letter confirming the determination.

### **III. EPA's Analysis of NDDA's Submittal**

Based on NDDA's partial delegation request, and applicable laws and regulations, EPA is proposing to approve the request as it appears NDDA has satisfied the relevant criteria of 40 CFR 63.91 and 63.95. EPA is treating NDDA’s request as a request for straight partial delegation under 40 CFR 63.91(a)(1), (4) and (f), since North Dakota has incorporated by reference the RM Program in 40 CFR part 68 as described above.

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<sup>3</sup> Consistent with 40 CFR 63.95(b), North Dakota did not incorporate the following sections into its regulations: 40 CFR 68.120 (Petition Process), 40 CFR 68.210 (Availability of Information to the Public), and 40 CFR 68.215 (Permit Content and Air Permitting Authority or Designated Agency Requirements).

In accordance with 40 CFR 63.91(d)(3)(i), the North Dakota Assistant Attorney General submitted a written finding of NDDA's authority to implement and enforce the RM Program for agricultural anhydrous ammonia facilities.<sup>4</sup> The Assistant Attorney General supplemented this finding to clarify that the NDDA does not have the criminal enforcement authority specified in section 70.11(a)(3)(ii) and (iii). As a result, North Dakota has not requested delegation of that criminal enforcement authority. With respect to the remaining requirements, North Dakota demonstrated the appropriate authority for section 70.11(a)(1) (ability to enjoin activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment), section 70.11(a)(2) (ability to enjoin violation of any program requirement), and section 70.11(a)(3)(i) (ability to assess civil penalties up to \$10,000 per day of violation).

The Assistant Attorney General also determined that NDDA had adequate authority to assure compliance with the RM Program for sources subject to these provisions. As explained above, NDCC 19-20.3 provides NDDA with authority to request information from and conduct inspections of such sources, as required by 40 CFR 63.91(d)(3)(i)(B) and (C).

In accordance with 40 CFR 63.91(d)(3)(ii)-(v), NDDA submitted copies of the appropriate provisions of State statutes and regulations, documentation of adequate resources to

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<sup>4</sup> North Dakota originally relied on authority under NDCC 19-20.2 for its adoption of the RM Program. NDCC 19-20.2 defined anhydrous ammonia storage facility as a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons. 40 CFR 68.130 sets a threshold quantity for accidental release prevention at ten thousand pounds, or approximately one thousand nine hundred forty gallons. EPA discussed this gap in potential coverage with the State. The Attorney General's supplemental finding identified NDDA's general rulemaking authority along with the grant of authority under NDCC 19-20.3 as appropriate authority for adoption of the RM Program for agricultural anhydrous ammonia facilities with the appropriate threshold.

implement and enforce the RM Program, and a schedule and plan to assure expeditious implementation and compliance by all sources, including a description of the State's compliance tracking and enforcement program (including inspection strategies). With respect to adequate resources and expeditious implementation, the NDDA currently has three employees devoted almost entirely to program implementation. With respect to expeditious compliance, NDDA already conducts inspections of anhydrous ammonia facilities once every five years to ensure compliance with NDCC 19-20.2. There are currently 368 licensed facilities in the State, which requires NDDA to inspect approximately 70 facilities each year. NDDA will conduct RM Program compliance inspections and audits while conducting inspections for the engineering requirements found in NDCC 19-20.2.<sup>5</sup>

In accordance with 40 CFR 63.95(b)(1), NDDA submitted information which demonstrates that it has the authority and resources to implement and enforce regulations that are no less stringent than the regulations in 40 CFR part 68, subparts A through G and section 68.200, and a requirement that subject sources submit a RMP that reports at least the same information in the same format to the same location as required under 40 CFR part 68, subpart G. As required by 40 CFR 63.95(b)(3)-(4), NDDA submitted documentation that it has adequate procedures for reviewing RMPs, providing technical assistance to stationary sources, including small businesses, and auditing RMPs in a manner consistent with 40 CFR 68.220. In particular, NDDA will review and audit RMPs as part of the inspections described above. The NDDA also anticipates providing technical assistance, including outreach and education, by conducting

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<sup>5</sup> As discussed above, NDCC 19-20.3 gives the Agriculture Commissioner the authority to conduct inspections and access records necessary to verify compliance with the RM Program. NDCC 19-20.3 also provides the legal authority for the NDDA to access, review and audit RMPs from regulated persons.

annual safety and compliance meetings with regulated persons as a tool to increase awareness of the RM Program requirements and improving compliance.

If this proposal is finalized, NDDA will have primary authority and responsibility to implement and enforce (with the exception of criminal enforcement) the RM Program for agricultural anhydrous ammonia facilities. However, nothing shall preclude, limit, or interfere with the authority of EPA to exercise its outreach and compliance assistance, enforcement, investigatory, and information gathering authorities concerning this part of the Act. If EPA determines that NDDA's procedures for enforcing or implementing the 40 CFR part 63 or 40 CFR part 68 requirements are inadequate, or are not being effectively carried out, this delegation may be revoked in whole or in part in accordance with the procedures set forth in 40 CFR 63.96(b).

In addition, this delegation to NDDA will not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the RM Program in Indian country because NDDA has not demonstrated authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

#### **IV. Proposed Action**

EPA proposes approving NDDA's request for partial delegation of authority to implement



and enforce (with the exception of criminal enforcement) the RM Program for agricultural anhydrous ammonia facilities. NDCA has incorporated by reference Federal requirements set forth in 40 CFR part 68 in NDAC 7-12-03 and regulates agricultural anhydrous ammonia facilities through this authority as well as its authority in NDCC 19-20.2 and 19-20.3. This partial delegation will extend to agricultural anhydrous ammonia facilities which are sources subject to the accidental release prevention regulations in 40 CFR part 68, with the exception of sources in Indian country.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Regional Administrator is authorized to approve program delegation when that program complies with the provisions of the Clean Air Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing delegation requests, EPA's role is to review and approve state programs provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves a state program and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the State program is not approved to regulate in Indian country located in North Dakota, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

#### **List of Subjects in 40 CFR Part 63**

Environmental protection, Risk management program, Air pollution control, Hazardous substances, Chemicals, Intergovernmental relations

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 22, 2013.

Shaun L. McGrath,  
Regional Administrator,  
U.S. EPA Region 8.

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